



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2012-0153; FRL-9688-1]

**Approval and Promulgation of Implementation Plans; State of
Missouri: Regional Haze**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval of a revision to the State Implementation Plan (SIP) for Missouri, submitted by the Missouri Department of Natural Resources on August 5, 2009, and supplemented on January 30, 2012, that addresses Regional Haze for the first implementation period. Specifically, these revisions address the requirements of the Clean Air Act (CAA or Act) and EPA's rules that required States to prevent any future and remedy any existing anthropogenic impairment of visibility in Class I Areas (national parks and wilderness areas) caused by emissions of air pollutants located over a wide geographic area (also known as the "regional haze" program). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA proposed to approve these revisions on February 28, 2012 (77 FR 11958). In a separate rulemaking action, EPA finalized the

limited disapproval of Missouri's regional haze SIP and imposed a Federal Implementation Plan (FIP) for Missouri on June 7, 2012. 77 FR 33642.

DATES: This rule will become effective [insert 30 days from publication in Federal Register], except that the amendment to § 52.1339 is effective August 6, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R07-OAR-2012-0153. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas, 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The regional office's official hours of business

are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chrissy Wolfersberger, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101; by telephone at (913) 551-7864; or by email at wolfersberger.chris@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" refer to EPA.

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I. Background

On February 28, 2012 (77 FR 11958), EPA published a notice of proposed rulemaking (NPR) for the State of Missouri, proposing limited approval of Missouri's regional haze plan for the first implementation period (through 2018). A detailed explanation of the CAA's visibility requirements and the regional haze rule as it applies to Missouri was provided in the NPR and will not be restated here. EPA's rationale for proposing limited approval of the Missouri SIP was described in

detail in the proposal, and is further described in this final rulemaking.

II. Public Comments and EPA Responses

The publication of EPA's proposed rule on February 28, 2012, initiated a 30 day public comment period that ended on March 29, 2012. During the public comment period we received one set of written comments from Earthjustice on behalf of the Natural Resources Defense Council and Sierra Club (collectively, the "Commenter").¹ We have summarized the comments and provided our responses below. A full copy of the comment letter is available in the docket for this rulemaking.

Comment 1: The Commenter asserts that EPA does not have the authority under the CAA to issue a limited approval and concurrent limited disapproval of Missouri's regional haze SIP. The Commenter contends that section 110(k) of the Act only allows EPA to fully approve, partially approve, and partially disapprove, conditionally approve, or fully disapprove a SIP. The Commenter contends that regional haze SIPs are not like other SIP submissions and must be "submitted as a whole" and therefore, EPA cannot grant limited approval to a state SIP while proposing to issue a partial FIP. The Commenter also

¹ After the close of the public comment period, EPA received comments in support of the proposed rule from the U.S. Forest Service. A copy of the comment letter is available in the docket for this rulemaking.

contends that EPA is required to determine whether the submittal "meets all applicable requirements" of section 110 (k) and does not allow EPA to approve the submittal on the grounds that it strengthens the Missouri SIP. The Commenter cites to several Federal appellate court decisions to support its contention that 110(k) of the Act limits EPA to "a conditional approval, a partial approval and disapproval, or a full approval."

Response 1: The cases cited by the Commenter in support of its contentions did not involve challenges to a limited approval approach and therefore are not applicable here. As discussed in the September 7, 1992, EPA memorandum cited in the notice of proposed rulemaking,² although section 110(k) of the CAA may not expressly provide authority for limited approvals, the plain language of section 301(a) does provide "gap-filling" authority authorizing the Agency to "prescribe such regulations as are necessary to carry out" EPA's CAA functions. EPA may rely on section 301(a) in conjunction with the Agency's SIP approval authority in section 110(k)(3) to issue limited approvals where it has determined that a submittal strengthens a given state SIP and that the provisions meeting the applicable requirements of the Act are not separable from the provisions that do not meet

² *Processing of State Implementation Plan (SIP) Revisions*, EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I-X, September 7, 1992, ("1992 Calcagni Memorandum") located at <http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf>.

the Act's requirements. EPA has adopted the limited approval approach numerous times in SIP actions across the nation over the last twenty years. Limited approval and limited disapproval actions are appropriate here because EPA has determined that Missouri's SIP revisions addressing regional haze, as a whole, strengthen the State's SIP and because the provisions in the SIP revisions are not separable.

Moreover, adopting the Commenter's position would ignore section 301 and violate the "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme, ***. A court must therefore interpret the statute 'as a symmetrical and coherent regulatory scheme,'*** and 'fit, if possible, all parts into an harmonious whole.'" *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (quoting *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989), *Gustafson v. Alloyd Co.*, 513 U.S. 561, 569 (1995), and *FTC v. Mandel Brothers, Inc.*, 359 U.S. 385, 389 (1959)).

The Commenter's claim that regional haze SIPs are somehow different from other SIPs is unfounded and not supported by the case law cited or the CAA. Notably, the Commenter cites no authority for its contention that regional haze SIPs must be "submitted as whole." In any event, today's action combined

with the "Transport Rule Better than BART" FIP 77 FR 33642 address all applicable requirements for Missouri with respect to the regional haze requirements of the Act.

Comment 2: The Commenter states that EPA must partially disapprove Missouri's regional haze SIP submittal because it relied on the Clean Air Interstate Rule (CAIR). The Commenter cites to the proposed Kentucky SIP to show that Missouri's long-term strategy, reasonable progress goals (RPGs) and decision to exempt electric generating units (EGUs) from Best Available Retrofit Technology (BART) should be disapproved due to the deficiencies identified in CAIR by the court and the impact of the Transport Rule on CAIR.

Response 2: This comment is based on the incorrect premise that through this rulemaking EPA is exempting Missouri sources from BART requirements. In 2008, the D.C. Circuit remanded CAIR back to the Agency because the court believed that CAIR was inconsistent with the requirements of the CAA. Although CAIR may not remain in effect indefinitely, it is currently in force, and the State's reliance on CAIR was fully consistent with EPA's regulations at the time that Missouri developed its regional haze SIP. As explained in the February 28, 2011, rulemaking (77 FR 11958), EPA is taking a limited approval action because the revisions as a whole strengthen the SIP and because the action

is consistent with the court's intention to keep CAIR temporarily in place. The limited approval results in an approval of the entire regional haze submission and all of its elements, preserving the visibility benefits offered by the SIP until CAIR is replaced by the Transport Rule. EPA recently demonstrated that the Transport Rule is better than BART. 77 FR 33642. EPA took a limited disapproval action because the Agency cannot fully approve regional haze SIP revisions that rely on CAIR for emissions reductions measures for the reasons discussed in Section III of the February 28, 2011, proposed rulemaking. 77 FR 11958. See also 77 FR 33642. EPA's response to Comment 1, above, explains the Agency's authority to take limited approval and limited disapproval actions under the CAA.

EPA disagrees with the Commenter's request for a partial disapproval of the SIP. Because the SIP provisions relying on CAIR, including the long term strategy (LTS) do not meet the applicable regional haze requirements and are not separable from the provisions that meet the applicable requirements of the Act, a partial disapproval would prevent any of the SIP's air quality benefits from being realized until EPA promulgated a FIP or approved a revised SIP to addresses the deficiencies. Furthermore, the two-year clock to promulgate a FIP to remedy the deficiencies is triggered by the limited disapproval just as

it would be triggered by a partial disapproval. On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal than would BART in the states in which the Transport Rule applies. See 76 FR 82219. Based on this proposed finding, EPA also proposed a FIP for Missouri in that action that would substitute participation in the trading programs under the Transport Rule for participation in CAIR for the purposes of satisfying regional haze requirements and would remedy the CAIR-related deficiencies discussed above. EPA finalized this action on June 7, 2012. 77 FR 33642. See also EPA's response to comments on the Transport Better than BART rulemaking. 77 FR 33642.

Comment 3: The Commenter identifies its opposition to EPA's December 30, 2011, proposed rulemaking to find that the Transport Rule is better than BART and to "use the Transport Rule as an alternative to BART" for Missouri and other states subject to the Transport Rule. The Commenter incorporates by reference its comments on that December 30, 2011, proposed rulemaking "by reference" and outlines several of those comments, including its arguments that the Transport Rule is not "better than BART" and that EPA cannot rely on the Transport Rule as an "alternative program to BART."

Response 3: In today's rule, EPA is taking final action on the limited approval of Missouri's regional haze SIP. The Commenter correctly recognizes that EPA did not propose to find that participation in the Transport Rule is an alternative to BART in this rulemaking. As noted above, EPA made this proposed finding in a separate action on December 30, 2011, and the Commenter is merely reiterating and incorporating its comments on that separate action. These comments are therefore not relevant to this rulemaking but have been addressed, as appropriate, by EPA in its final action on the December 30, 2011, proposed rule. 77 FR 33642.

Comment 4: The Commenter states that EPA should disapprove Missouri's long-term strategy because Missouri's SIP is insufficient to address Missouri's visibility impact on Class I areas in other states, particularly the Wichita Mountains Class I area in Oklahoma (WIMO) and the Boundary Waters Class I area in Minnesota (BOWA). The Commenter states that Missouri's reliance on on-the-books requirements for EGUs, mobile sources, area sources, other point sources, and CAIR without requiring additional emissions reductions at various facilities is not sufficient to meet the requirements of the regional haze rule. The Commenter states that Missouri's analysis of impact of its sources on out-state Class I areas is not supported by modeling.

Further, the Commenter states that Missouri's reliance on cost as the basis for not requiring controls is incorrect and Missouri should focus on whether it has done its share to reduce visibility impact in those Class I areas.

Response 4: EPA disagrees with the Commenter that Missouri's long-term strategy does not adequately address visibility impacts on Class I areas in other states, such as in WIMO in Oklahoma, and BOWA in Minnesota. Further, the Commenter provides no evidence that Missouri has not addressed its fair share of emission reductions.

As described in the proposal, Missouri properly entered into the consultation process with both Oklahoma and Minnesota and provided sufficient evidence to demonstrate its long-term strategy includes all measures necessary to obtain its share of emission reductions as required by the regional haze rule.

Missouri appropriately concluded additional controls on Missouri's sources are not reasonable due to the limited visibility improvement at WIMO. In a September 17, 2007, letter from Missouri to Oklahoma, Missouri responded to Oklahoma's conclusion that Missouri is reasonably anticipated to contribute to visibility impairment at WIMO. Missouri noted that, based on the PSAT analysis presented by Oklahoma, over half the elevated point-source impacts to WIMO are from sources in Oklahoma,

Texas, and Louisiana, and most of the area source impacts are from Oklahoma and Texas sources. Missouri's analysis shows that its sources only account for about 2.5 percent and 2.75 percent visibility impairment at WIMO in 2002 and 2018, respectively based on the PSAT modeling. Additionally, Missouri questioned Oklahoma's use of one inverse megameter to determine the contribution threshold. Missouri found that this low threshold, combined with Oklahoma's reliance upon a one metric test using Particulate Matter Source Apportionment Technology (PSAT), as opposed to multiple tests utilized for the Central Class I Areas for determining contribution, resulted in an analysis that was too narrow. As a result of this narrow analysis, Missouri was found to be contributing to WIMO while many other states were left out with no strong rationale in Oklahoma's analysis as to why these states were treated differently. Missouri also questioned how Oklahoma's analysis could conclude that Missouri sources were contributing to WIMO, which is located 200 to 250 miles from Missouri's western border, but Missouri's analysis showed that the emission reductions obtained by Missouri would address reasonable progress goals in nearby Central Class I areas in Missouri and Arkansas. Missouri's analysis and conclusions regarding Missouri source contributions to WIMO were reasonable.

Further, EPA disagrees with the Commenter's assertion that Missouri inappropriately relied upon costs to rule out additional emission controls at Missouri sources. Missouri did not solely rely on estimation of costs, but instead considered the limited potential visibility improvements of additional controls based on the modeling in addition to consideration of cost. EPA also notes that Oklahoma did not respond to Missouri's September 17, 2007 letter with any additional analysis.

Missouri also entered into a consultation process with Minnesota. Minnesota identified Missouri as a contributing state to the BOWA based on a Lake Michigan Air Directors Consortium (LADCO) trajectory analysis. Missouri relied upon PSAT modeling analysis to estimate the potential visibility benefit at BOWA if Missouri were to require additional emissions reductions from Missouri sources. Missouri relied upon the PSAT modeling analysis to demonstrate that the overwhelming majority of emissions impacts on BOWA are from Minnesota and neighboring states, with Missouri contributing less than 3 percent in 2002 and 2018. Based on this modeling analysis, EPA believes Missouri appropriately concluded additional emission reductions from Missouri sources were not reasonable due to the likely limited visibility improvement at BOWA.

We also used Missouri's reasonable further progress (RFP) analysis to provide further support to our determination of the adequacy of Missouri's long-term strategy. Missouri's four-factor analysis examined the effectiveness of additional emissions reductions from Missouri sources on visibility improvement in Missouri Class I areas and examined all anthropogenic source categories, including point, area, on-road and off-road mobile, with a focus on large point sources. Missouri's four-factor analysis supports EPA's conclusion that Missouri appropriately determined that the amount of visibility improvement from additional controls on point sources would not have a significant impact on Missouri Class I areas. EPA believes the same determination could be made regarding Missouri's impact on more distant Class I areas in other states. It is reasonable to conclude from Missouri's modeling and four-factor analysis that the increased distance from Missouri sources to the Oklahoma and Minnesota Class I areas would only decrease the previously demonstrated limited effectiveness of additional emission reductions from Missouri sources.

Comment 5: The Commenter states that Missouri's proposed BART limits for the Holcim-Clarksville facility fail to satisfy the requirements of BART. The Commenter states that the sulfur dioxide (SO₂) control option selected as BART for the facility is

flawed and not approvable as BART for two reasons. First, the Commenter argues that the cost of the wet scrubber was inaccurately inflated. Second, the Commenter states that Missouri Department of Natural Resources (MDNR) assumed an incorrect removal efficiency for a dry scrubber. The Commenter also states that the nitrogen oxides (NO_x) control option selected as BART for the Holcim-Clarksville facility is flawed because EPA has "concluded that BART is a combination of selective non-catalytic reduction (SNCR) and Low-NO_x burner" for a Holcim facility located in Montana.

Response 5: In a letter dated November 20, 2010, Holcim requested that the State terminate the operating permit for the emission units at the source that are subject to BART because it curtailed operations at Holcim-Clarksville so that the facility will no longer manufacture Portland cement or burn hazardous fuel. The curtailment of operations conforms to the State Consent Agreement (Appendix S), which EPA is approving into the SIP in today's action. In its June 23, 2011, response to Holcim's request, MDNR revised Holcim's Title V permit to be a Basic State Operating permit; removed the BART-eligible emission units from the permit, which thereby prohibits Holcim from operating those units; and limited emissions of any visibility

impairing pollutant to less than 100 tons per year. A copy of MDNR's letter is in the docket for this rulemaking.

Moreover, MDNR has stated in its letter, and EPA agrees, that Holcim must continue to meet all applicable federal and state regulations and if conditions change, new standards are promulgated, or if Holcim intends to add or re-start any equipment, a new operating and/or construction permit may be necessary. By choosing to shutdown in accordance with the Consent Agreement, Holcim will not operate the BART-eligible units at the Clarksville facility, therefore, EPA does not need to address the Commenter's issues regarding the BART limits for the facility.

III. Final Action

EPA is finalizing a limited approval of the State of Missouri's Regional Haze SIP, submitted on August 5, 2009, with supplemental information provided on January 30, 2012, as meeting some of the applicable regional haze requirements set forth in section 169A and 169B of the Act and in the Federal regulations codified at 40 CFR 51.300-308, and the requirements of 40 CFR Part 51, Subpart F and Appendix V.

IV. Statutory and Executive Order Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of

the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: June 7, 2012

Karl Brooks

Regional Administrator,

Region 7.

40 CFR part 52 is amended as follows:

Part 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: [42 U.S.C. 7401](#) et seq.

Subpart AA—Missouri

2. In § 52.1320:

a. The table in paragraph (d) is amended by adding a new entry (26) in numerical order; and

b. The table in paragraph (e) is amended by adding a new entry (57) in numerical order.

The additions read as follows:

§ 52.1320 Identification of plan.

* * * * *

(d) EPA-approved State source-specific permits and orders.

EPA-APPROVED MISSOURI SOURCE-SPECIFIC PERMITS AND ORDERS

Name of source	Order/permit Number	State effective date	EPA approval date	Explanation
* * * * *				
(26) Holcim		April 19, 2009	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	§52.1339(c); Limited Approval

(e) EPA approved nonregulatory provisions and quasi-regulatory measures.

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or Nonattainment area	State submittal date	EPA approval date	Explanation
* * * * *				
(57) Regional Haze Plan for the first implementation period	Statewide	8/5/09, supplemented 1/30/12	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	§52.1339(c); Limited Approval

3. Section 52.1339 is amended by revising paragraph (c) to read as follows:

§52.1339 Visibility protection.

* * * * *

(c) *Regional Haze*. The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by Missouri on August 5, 2009, and supplemented on January 30, 2012, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_x and SO₂ from electric generating units. EPA has given limited approval and limited disapproval to the plan provisions addressing these requirements.

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Date: 06/26/2012]